

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
SHAWN ROBIN GIBSON,. individually,)	
d/b/a/ New Detroit Tax Service, and)	
Shawn Gibson & Company)	
)	
Defendant.)	
_____)	

COMPLAINT FOR PERMANENT INJUNCTION

This is a civil action brought by the United States to permanently enjoin defendant Shawn Robin Gibson from preparing federal income tax returns, amended federal income tax returns and other related documents and forms for others; representing customers before the Internal Revenue Service (“IRS”), advising, assisting, counseling, or instructing anyone about the preparation of a federal tax return; and from promoting tax-fraud schemes.

Jurisdiction

1. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to 26 U.S.C. §§ 7402(a), 7407 and 7408.

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407, and 7408.

3. The defendant Shawn Robin Gibson currently resides within the jurisdiction of this court.

Facts Common to All Counts

4. Mr. Gibson prepares or assists in the preparation of federal income tax returns for other people for compensation.

5. Mr. Gibson operates businesses that provide tax return-preparation services under the names New Detroit Tax Service and Shawn Gibson & Company. He advertises and promotes himself to be a certified public accountant (“CPA”) although he has failed to pass the CPA exam twice and does not hold any professional licenses of any kind.

6. The IRS has identified 414 federal income tax returns as being prepared by New Detroit Tax Service and/or Shawn Gibson & Company. This number of returns may not reflect all of the returns prepared by Mr. Gibson, New Detroit Tax Service and/or Shawn Gibson & Company, since some returns were filed with the IRS under the taxpayer’s name with no reference as to the tax return preparer.

7. For tax years 1999 through 2004, the IRS has completed examinations of at least 38 of the 414 federal income tax returns prepared by Mr. Gibson. Mr. Gibson filed many of these tax returns electronically without the customer’s knowledge and for many of these returns and others that were manually filed, he did not provide the customer with a copy of the tax return at the time the return was submitted to the IRS.

8. These 38 returns examined by the IRS contained false deductions and credits, including falsely claimed tuition and fees deductions, inflated or fictitious charitable

contributions, false Schedule C deductions, false Schedule A deductions (specifically property taxes and miscellaneous deduction) and falsely claimed education credits. Many of the tax returns that Mr. Gibson prepared and filed for customers were filed with forged taxpayer signatures or electronically filed without the taxpayer's consent.

9. Mr. Gibson directed many of his customers' tax refunds to be directly deposited into his bank account or one of his businesses' bank accounts. Alternatively, Mr. Gibson would direct the customer's tax refund check to be sent to his address and then arrange to have the taxpayer meet him or one of his associates to cash the refund check at the bank or would cash the refund check for the taxpayer at his business. The amount of the refund that the taxpayer would receive was smaller than that claimed on the federal tax return submitted to the IRS. Mr. Gibson retained the difference between the refund amount reported on the return and the amount remitted to the taxpayer.

10. In furtherance of obtaining additional taxpayer refunds to which he was not entitled, Mr. Gibson filed forged power of attorney forms with the IRS to obtain taxpayer information to file amended returns claiming refunds, thus lowering the taxes owed and changing the taxpayer's address so that he received the tax refund without the taxpayer's knowledge. Mr. Gibson did not provide the customer with copies of these and other amended returns on which refunds were claimed.

14. Mr. Gibson has a history of violating federal tax laws. In case 2:06-cr-20351-DPH-RSW (USDC E.D. Mich.), he was indicted on: (1) one count of knowingly, intentionally and unlawfully attempting to intimidate a witness to withhold testimony and other information from

an IRS and grand jury investigation against him in violation of 18 U.S.C. 1512(b)(2)(A) and (i); (2) 38 counts of willfully aiding and assisting in the preparation of false and fraudulent tax returns in violation of 26 U.S.C. § 7206(2); and (3) conspiring to impede, obstruct, and defeat the lawful functions of the IRS in violation of 18 U.S.C. § 371. See Docket Entry No. 26. In 2006, Mr. Gibson pled guilty to one count of the indictment, conspiracy to commit offense or to defraud the United States in violation of 18 U.S.C. § 371, and was sentenced to 34 months imprisonment, two years of supervised release and ordered to pay restitution in the amount of \$286,983. See Docket Entry Nos. 56, 105. Mr. Gibson is currently incarcerated on this charge and is scheduled to be released in June 2009.

15. In addition, on July 21, 2008, Mr. Gibson was charged by information in case 2:08-cr-20390-DPH-RSW (USDC E.D. Mich.) with three counts of aiding and assisting in the preparation of false and fraudulent federal income tax returns in violation of 26 U.S.C. § 7206(2). On July 21, 2008, Mr. Gibson pled guilty to one count of aiding and assisting in the preparation of false and fraudulent tax returns in violation of 26 U.S.C. § 7206(2). See Docket Entry No. 7. With respect to the other two counts, Mr. Gibson “admit[ted] and agree[d] that he knowingly and wilfully prepared false income tax returns and that such income tax returns contained false information.” Id. at 4. This admitted conduct occurred after Mr. Gibson became aware in April 2005, that he was under investigation by the Criminal Investigation Division of the IRS, and /or his release from custody on or about December 6, 2006, pending sentencing in case 2:06-cr-20351-DPH-RSW (USDC E.D. Mich.) Mr. Gibson’s sentencing in case 2:08-cr-20390-DPH-RSW (USDC E.D. Mich.) is scheduled for December 2008.

16. Mr. Gibson's actions cause harm to the United States and to the public.

17. The IRS has issued erroneous refunds based on fraudulent returns prepared by Mr. Gibson and has then had to audit Mr. Gibson's customers and take collection action against them to attempt to recoup the money.

18. The IRS has spent considerable time and resources auditing returns prepared by Mr. Gibson and collecting the taxes owed and erroneous refunds paid.

19. Mr. Gibson has also harmed his customers because they pay him to prepare these returns, and, after the fraud is detected, are responsible for paying all taxes, interest, and penalties.

Count I:

Injunction under 26 U.S.C. § 7408 for Violation of 26 U.S.C. § 6701

20. The United States incorporates by reference the allegations in paragraphs 1 through 19.

21. A court is authorized to issue an injunction if an income tax preparer engages in conduct subject to penalty under 26 U.S.C. § 6701, pursuant to 26 U.S.C. § 7408.

22. Section 6701 penalizes any person (1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document; (2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws; and (3) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person.

23. Mr. Gibson prepares or assists in the preparation of federal income tax returns for his customers.

24. Mr. Gibson knows or has reason to believe that these income tax returns will be filed with the IRS and thus will be used in connection with a material matter arising under the internal revenue laws.

25. Mr. Gibson knows that the federal tax returns he prepares will result in understatements of other persons' tax liabilities.

26. If Mr. Gibson is not enjoined, he is likely to continue to engage in conduct which violates § 6701.

**Count II:
Injunction under 26 U.S.C. § 7407 for Violation of 26 U.S.C. §§ 6694 and 6695**

27. The United States incorporates by reference the allegations in paragraphs 1 through 26.

28. A court is authorized to issue an injunction if an income tax return preparer engages in conduct subject to penalty under 26 U.S.C. § 6694 or § 6695, pursuant to 26 U.S.C. § 7407.

29. Section 6694(a) penalizes a tax return preparer if (1) the preparer prepares a return or claim for refund that includes an understatement of liability due to a position for which there is not a realistic possibility of being sustained on the merits; (2) the preparer knew (or reasonably should have known) of such position; and (3) the position was not disclosed in accordance with § 6662(d)(2)(B)(ii) or was frivolous.

30. Section 6694(b) penalizes a tax return preparer who prepares a return or claim with an understatement of liability (1) in a willful attempt to understate the liability or (2) with a reckless and intentional disregard of rules or regulations.

31. Section § 6695(a) penalizes a tax return preparer who fails to provide a completed copy of a tax return or claim for refund to the taxpayer at the time the return or claim is submitted to the taxpayer for his signature.

32. Mr. Gibson's conduct as described above is subject to penalty under §§ 6694(a), 6694(b) and 6695(a).

33. Mr. Gibson has prepared income tax returns that include understatements of his customers' liability which had no realistic possibility of being sustained on the merits; Mr. Gibson knew or reasonably should have known about these understatements; Mr. Gibson did not disclose them in accordance with 26 U.S.C. § 6662(d)(2)(B)(ii); and such understatements are based on frivolous positions. Mr. Gibson has thus engaged in conduct subject to penalty under § 6694(a).

34. Mr. Gibson prepares returns for customers with false entries in a willful attempt to understate the customers' liability or with a reckless and intentional disregard of rules and regulations. Mr. Gibson has thus engaged in conduct subject to penalty under § 6694(b).

35. Mr. Gibson did not provide his customers with copies of their completed tax returns as required by 26 U.S.C. § 6107(a). Mr. Gibson has thus engaged in conduct subject to penalty under § 6695(a).

36. Mr. Gibson has continually and repeatedly engaged in conduct that violates §§ 6694 and 6695. An injunction merely prohibiting Mr. Gibson from engaging in conduct subject to penalty under §§ 6694 and 6695 would not be sufficient to prevent his interference with the

proper administration of the tax laws. Accordingly, Mr. Gibson should be permanently enjoined from acting as an income tax return preparer.

**Count IV:
Injunction under I.R.C. § 7402(a) for Unlawful Interference
with Enforcement of the Internal Revenue Laws
and Appropriateness of Injunctive Relief**

37. The United States incorporates by reference the allegations in paragraphs 1 through 36.

38. A court is authorized to issue orders of injunction as may be necessary or appropriate to enforce the internal revenue laws, pursuant to 26 U.S.C. § 7402(a).

39. Section § 7402(a) expressly provides that its injunction remedy is “in addition to and not exclusive of” other remedies for enforcing the internal revenue laws.

40. Mr. Gibson, through the actions described above, has engaged in conduct that interferes substantially with the enforcement of the internal revenue laws.

41. Mr. Gibson’s conduct causes irreparable harm to the United States and to his customers.

42. Mr. Gibson is causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

43. If Mr. Gibson is not enjoined, he is likely to continue to engage in conduct that interferes with the enforcement of the internal revenue laws.

44. The United States will suffer irreparable injury if Mr. Gibson is not enjoined. This outweighs the harm to Mr. Gibson from being enjoined from return-preparation and violating tax laws.

45. The public interest would be advanced by enjoining Mr. Gibson because an injunction will stop his illegal conduct and the harm that conduct is causing to the United States Treasury.

WHEREFORE, the United States of America, prays for the following:

A. That the Court find that Mr. Gibson has engaged in conduct subject to penalty under 26 U.S.C. § 6701, and that injunctive relief under 26 U.S.C. § 7408 is appropriate to prevent a recurrence of that conduct;

B. That the Court find that Mr. Gibson has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695, and that, pursuant to 26 U.S.C. § 7407, an injunction prohibiting such conduct would not be sufficient to prevent Mr. Gibson's interference with the proper administration of the tax laws and that Mr. Gibson should be enjoined from acting as an income tax return preparer;

C. That the Court find that Mr. Gibson is interfering with the enforcement of the internal revenue laws and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. § 7402(a) and the Court's inherent equity powers;

D. That this Court, pursuant to 26 U.S.C. § 7408, enter a permanent injunction prohibiting Mr. Gibson, individually and doing business as New Detroit Tax Service, Shawn Gibson & Company, or under any other name or using any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly:

1. Engaging in activity subject to penalty under 26 U.S.C. § 6701, including aiding or assisting in, procuring, or advising with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document; knowing (or having reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws; and knowing that such portion (if so used) would result in an understatement of the liability for tax of another person; and
2. Engaging in any other activity subject to penalty under 26 U.S.C. § 6701 or any other provisions of the Internal Revenue Code.

E. That this Court, pursuant to 26 U.S.C. § 7407, enter a permanent injunction prohibiting Mr. Gibson, individually and doing business as New Detroit Tax Service, Shawn Gibson & Company, or under any other name or using any other entity, and his representatives, agents, servants, employees, attorneys, and all persons in active concert or participation with him, from directly or indirectly acting as a federal income tax return preparer;

F. That this Court, pursuant to 26 U.S.C. § 7402(a), enter a permanent injunction prohibiting Mr. Gibson, individually and doing business as New Detroit Tax Service, Shawn Gibson & Company, or under any other name or using any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly:

1. Preparing or assisting in the preparation of any federal tax return for anyone other than himself;
2. Advising, counseling, or instructing anyone about the preparation of a federal tax return;
3. Owning, managing, controlling, working for, or volunteering for a tax-return-preparation business;
4. Representing customers in connection with any matter before the IRS; and

5. Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws.

G. That this Court, pursuant to 26 U.S.C. § 7402(a), require Mr. Gibson at his own expense to contact by mail all customers for whom he has prepared federal tax returns or assisted in preparing tax returns, and send them a copy of this Complaint and the permanent injunction order, and to certify to the Court within eleven days of entry of the permanent injunction that he has complied with this provision;

H. That this Court require Mr. Gibson to provide the United States with a list of everyone for whom he has prepared (or helped to prepare) a federal tax return for the years 1999-2007 and set forth on said list all of the names, addresses, e-mail addresses, telephone numbers, and social security numbers of the customers.

I. That this Court permit the United States to conduct post-judgment discovery to ensure Mr. Gibson's compliance with the permanent injunction; and

J. That this Court grant the United States such other relief, including costs, as is just and equitable.

Respectfully submitted,

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